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July 17, 2017

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Super Law Group, LLC
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**Re: NY/NJ Baykeeper and Save the Sound
Notice of Intent to File Suit under the Clean Water Act**

Dear Mr. Taper:

This office represents Inwood Material Terminal, LLC (“IMT”). I write in response to the May 23, 2017 Notice of Violation and Intent to File Suit under the Clean Water Act (“Notice”) prepared by your firm on behalf of Raritan Baykeeper, Inc. d/b/a NY/NJ Baykeeper and Connecticut Fund for the Environment d/b/a Save the Sound (collectively, the “Notifiers”), with respect to the IMT facilities located at 1 Sheridan Boulevard, Inwood, New York (“Sheridan Facility”), 2 Rason Road, Inwood, New York (“Rason Facility”), and 47 Herb Hill Road, Glen Cove, New York (“Herb Hill Facility,” and collectively with the Sheridan Facility and the Rason Facility, the “IMT Facilities”).

The Notice alleges that the IMT Facilities are operating in violation of certain provisions of the Clean Water Act (“CWA”) and the Resource Conservation and Recovery Act (“RCRA”). Specifically, the Notice asserts that the IMT Facilities are operating in violation of Section 402(p) of the CWA and 40 CFR §§ 122.26(c)(1) and (e)(1)¹ and that the Rason Facility is operating in violation of 42 USC § 6945(a) and 40 CFR Part 257.² For the reasons set forth below, the violations alleged in the Notice are unfounded and without merit.

¹ Notice at Section II.B.

² *Ibid* at Section III.

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Alleged CWA Violations

The Notice alleges that the IMT Facilities are violating Section 402(p) of the CWA and 40 CFR §§ 122.26(c)(1) and (e)(1) because their operations include concrete ready mix plants and construction and demolition (“C&D”) debris processing and they have not obtained an individual National Pollutant Discharge Elimination System (“NPDES”) permit nor coverage under the New York State Department of Environmental Conservation (“DEC”) General Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”).³ The Notice alleges that IMT’s purported concrete ready mix operations and C&D debris processing operations are industrial activities under Standard Industrial Classification (“SIC”) Codes 3273 and 5093, each which requires coverage under the General Permit.⁴ The Notice further alleges that IMT has failed to comply with the monitoring and reporting requirements of the General Permit.⁵

IMT commenced its business operations in May 2013. Concrete ready mix operations were discontinued at the Sheridan Facility and Herb Hill Facility in July 2014.⁶ Accordingly, neither the Sheridan Facility nor the Herb Hill Facility has operated a concrete ready mix plant in the last three years. Neither IMT nor, to its knowledge, its predecessor operated a concrete ready mix facility at the Rason Road Facility. IMT dismantled the concrete plant equipment at the Sheridan Facility in February 2017. IMT has commenced dismantling of the concrete plant at the Herb Hill Facility and plans to complete removal of the concrete plant equipment from that facility within the next few months. Accordingly, IMT is not, has not, and does not plan to in the future operate a concrete ready mix plant at any of the IMT Facilities. Thus, the allegation that the IMT Facilities require an individual NPDES permit or coverage under the General Permit as a result of the prior concrete ready mix operations is without merit.⁷

The Notice also alleges that the IMT Facilities’ C&D debris processing operations are industrial activities under SIC Code 5093 and therefore require coverage under the General Permit. For the reasons below, the IMT Facilities do not require coverage under the General Permit.

SIC Code 5093, Scrap and Waste Materials, pertains to the following industrial activities:

³ Id. at Section II.

⁴ Id. at Section II.B.

⁵ Id.

⁶ These concrete ready mix operations were not performed by IMT.

⁷ Moreover, to the extent that Notifiers intend to file suit alleging past violations of IMT or its predecessors, it is well settled that Section 505 of the CWA does not authorize citizen suits for wholly past violations. Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc. 484 US 49 [1987].

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[e]stablishments primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials. This industry includes auto wreckers engaged in dismantling automobiles for scrap.⁸

Examples of industrial activities within SIC Code 5093 include:

Automotive wrecking for scrap-wholesale, bag bottles, waste-wholesale, boxes, waste-wholesale, fur cuttings and scraps-wholesale, iron and steel scrap-wholesale, junk and scrap, general line-wholesale, metal waste and scrap-wholesale, nonferrous metals scrap-wholesale, oil, waste-wholesale, plastics scrap-wholesale, rags-wholesale rubber scrap-wholesale, scavenging-wholesale, scrap and waste materials-wholesale, textile waste-wholesale, wastepaper, including paper recycling-wholesale, wiping rags, including washing and reconditioning-wholesale.⁹

C&D debris processing facilities are not an industrial activity within SIC Code 5093. C&D debris facilities fall within SIC Code 4953, Refuse Systems. C&D debris processing facilities within SIC Code 4953 are not among the industrial activities requiring coverage under the General Permit.¹⁰ Accordingly, the Notifiers' allegation that the IMT Facilities require coverage under the General Permit as a result of the C&D debris operations are without merit.

For the foregoing reasons, the Notifiers' allegations that IMT is violating the CWA by failing to obtain an individual NPDES permit or coverage under the General Permit lack any legal or factual support. For the same reasons, the Notifiers' claims that IMT has failed to comply with the terms and conditions of the General Permit are unsubstantiated.

Alleged RCRA Violations

The Notice alleges that IMT is violating RCRA by operating an illegal open dump at the Rason Road Facility.¹¹ The Rason Road Facility operates as a C&D debris processing facility pursuant to a validly-issued and effective DEC Solid Waste Registration (Registration No. 30W15R, and hereinafter referred to as the "Rason Registration"). The Rason Registration was issued to IMT's corporate predecessor, South Island Industries, Inc. on September 29, 1997 and

⁸ See <http://siccode.com/en/siccodes/5093/scrap-and-waste-materials>.

⁹ Id.

¹⁰ See 40 CFR 122.26(b)(14).

¹¹ See Notice, Section III.

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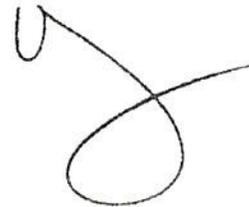
transferred to IMT as of February 6, 2015. The Rason Registration authorizes IMT to accept and process at the Rason Road Facility recognizable uncontaminated concrete, asphalt, brick, soil and rock. IMT is and will continue to operate the Rason Road Facility in compliance with the terms and conditions of the Rason Registration. Accordingly, the allegation that IMT is operating an unpermitted open dump at the Rason Road Facility in violation of RCRA is also unfounded and without merit.

Conclusion

For all of the foregoing reasons, Notifiers' allegations that IMT is violating the CWA and RCRA lack any factual or legal foundation and thus would not form the basis for a cognizable claim. Nevertheless, IMT hereby reserves all of its rights with respect to alleged violations and any defenses it has or may have with respect to said allegations. Nothing in this response constitutes or should be deemed to constitute an admission or a waiver of rights with respect to the alleged violations.

Very truly yours,


Brendan Mooney



BJM/km

cc:

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